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CHAPTER Env-Dw 1000 GRANTS FOR PUBLIC WATER SYSTEMS

PART Env-Dw 1002 WATER SUPPLY LAND PROTECTION GRANT PROGRAM

Statutory Authority: RSA 486-A

REVISION NOTE:

Document #9490, effective 6-23-09, readopted with amendments and renumbered former Part Env-Ws 394, entitled Water Supply Land Grant Program, under a new subtitle as Part Env-Dw 1002 entitled Water Supply Land Protection Grant Program within a new Chapter Env-Dw 1000 entitled Grants for Public Water Systems. The redesignation from subtitle Env-Ws to subtitle Env-Dw was done pursuant to a rules reorganization plan for Department rules approved by the Director of the Office of Legislative Services on 9-7-05.

Document #9490 replaces all prior filings for rules formerly in Env-Ws 394. The prior filings for rules in former Env-Ws 394 include the following documents:

#7400, INTERIM, eff 11-3-00, EXPIRED: 5-2-01

#7487, eff 5-3-01

#9461, INTERIM, eff 5-3-09

Env-Dw 1002.01 Purpose. The purpose of these rules is to establish procedures and standards for the application and award of grants to purchase land or conservation easements for land within the source water protection areas of active or proposed sources of public water supply for community or non-community, non-transient water systems to ensure the permanent protection of these critical drinking water resources.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.02 Definitions.

- (a) “Active” means being subject to RSA 485, the NH Safe Drinking Water Act.
- (b) “Applicant” means an entity that is applying for a water supply land protection grant under this program and that is:
 - (1) A municipality; or
 - (2) A nonprofit organization exempt from taxation under §501(c)(3) of the Internal Revenue Code which has public water supply as its principal mission.
- (c) “Community water system” means “community water system” as defined in RSA 485:1-a, I, namely “a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.”
- (d) “Conservation easement” means a legally-enforceable agreement between a land owner and a person who holds the conservation easement, such as a land trust or governmental agency, that permanently restricts the uses of the land to which it applies in order to protect the land’s conservation values.
- (e) “Conservation interest” means:
 - (1) The fee simple ownership of a parcel of land where the land is to be protected from development in perpetuity; or
 - (2) A conservation easement.

- (f) “Department” means the department of environmental services.
- (g) “Grant property” means:
- (1) Fee ownership of a parcel of land, or portion thereof, that will be acquired using grant funds and protected from development in perpetuity; or
 - (2) An interest in land that will protect the land from development in perpetuity, such as a conservation easement, that is to be acquired using grant funds.
- (h) “Known contamination source” means a source of contamination that is identified in the department’s geographic information system (GIS).
- (i) “Match property” means:
- (1) Fee ownership of a parcel of land, or portion thereof, that is to be protected from development in perpetuity as part of the match requirements specified in Env-Dw 1002.06; or
 - (2) An interest in land, such as a conservation easement, that will be used to meet the match requirements specified in Env-Dw 1002.06.
- (j) “Municipality” means a city, town, village district, or precinct.
- (k) “Non-transient non-community water system” means “non-transient non-community water system” as defined in RSA 485:1-a, XI, namely “a system which is not a community water system and which serves the same 25 people, or more, over 6 months per year.”
- (l) “Person” means “person” as defined in RSA 485:1-a, XIII, namely “any individual, partnership, company, public or private corporation, political subdivision or agency of the state, department, agency or instrumentality of the United States, or any other legal entity.”
- (m) “Potential contamination source” means, as specified in RSA 485-C:7, I, human activities or operations upon the land surface that pose a foreseeable risk of introducing regulated substances into the environment in such quantities as to degrade the natural groundwater quality. Examples of potential contamination sources are listed in RSA 485-C:7, II.
- (n) “Proposed source” means a proposed well or surface water intake for which a community or non-transient non-community water system has received all required approvals from the department.
- (o) “Riparian frontage” means the extent of the frontage of land along a surface water that is:
- (1) Depicted in the high resolution National Hydrography Dataset (NHD) maintained by the New Hampshire geological survey at 1:24,000-scale or better as lake/pond, stream/river, swamp/marsh, canal/ditch, connector, or reservoir, and which drains to the water supply source via surface flow; or
 - (2) A perennial stream that has continuous flow during years of normal rainfall and which drains to the water supply source via surface flow.
- (p) “Sanitary protective area” means the sanitary protective area determined pursuant to Env-Dw 302.06(b) and (c).
- (q) “Source” means groundwater or surface water which contributes water to a well or surface water intake.

(r) “Source water protection area” means “source water protection area” as defined in RSA 486-A:2, VI, namely “the area around a source of public drinking water, such as a well or surface water intake, through which water is likely to flow towards the source.”

(s) “Stewardship” means “stewardship” as defined in RSA 486-A:2, VII, namely “ongoing surveillance of water supply protection land acquired pursuant to this chapter to ensure that the conservation intent is maintained.”

(t) “Undeveloped” means forest, farm, or other land that has not been substantially altered from its natural state and contains no structures or alterations which would jeopardize water quality.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.03 Process for Obtaining Water Supply Land Protection Grants. The process for obtaining a water supply land protection grant shall be as follows:

(a) The applicant shall complete a project eligibility application in accordance with Env-Dw 1002.07 and submit it to the department prior to the deadline specified by the department in accordance with Env-Dw 1002.04;

(b) The department shall make an eligibility determination on each project eligibility application and notify each applicant in accordance with Env-Dw 1002.08;

(c) For each project that is determined to be eligible, the applicant shall:

(1) Complete a final grant application in accordance with Env-Dw 1002.09, which includes documentation of at least a 75% match as specified in Env-Dw 1002.06; and

(2) Submit the final grant application to the department in accordance with Env-Dw 1002.09 by the deadline established by the department in accordance with Env-Dw 1002.04;

(d) The department shall review and rank the final applications in accordance with Env-Dw 1002.12 and notify each applicant of project selection in accordance with Env-Dw 1002.14;

(e) For each project that is selected for a grant, the applicant shall submit the following to the department prior to the grant being awarded:

(1) An environmental site assessment, if required by Env-Dw 1002.15(b), prepared in accordance with Env-Dw 1002.15(c) and (d);

(2) A property survey prepared in accordance with Env-Dw 1002.16;

(3) An appraisal prepared in accordance with Env-Dw 1002.17;

(4) A title examination and an opinion of title prepared in accordance with Env-Dw 1002.18;

(5) Baseline documentation in accordance with Env-Dw 1002.21(c); and

(6) A stewardship plan in accordance with Env-Dw 1002.21(b)(3); and

(f) For each grant that is awarded, the applicant shall:

(1) Execute the land transaction(s) in accordance with Env-Dw 1002.22;

(2) Record the deed(s) and survey(s), if applicable, in accordance with Env-Dw 1002.22;

(3) Adhere to grant contract conditions; and

(4) Provide ongoing stewardship of each grant property and match property in accordance with Env-Dw 1002.21(d).

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.04 Application Deadlines.

(a) The deadline for submission of project eligibility applications shall be no sooner than 60 days following the date that grant funds become available and no later than 180 days following such date.

(b) The department shall announce the deadline by publishing the date on the department's web page, issuing a press release, and mailing an announcement by U.S. Postal Service or electronic mail, or both, to those entities who have requested to be informed of such deadlines.

(c) For each round of funding, the final application deadline shall be:

(1) No later than 120 days from the project eligibility application deadline; and

(2) Announced at the same time as the project eligibility application deadline.

(d) Eligibility applications for projects that occur between grant rounds shall be considered for funding in a subsequent grant round provided the eligibility application is submitted prior to the applicant acquiring the land or conservation easement(s).

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.05 Eligibility Criteria. A project shall be eligible for a grant only if all of the following conditions are met:

(a) Each grant property and each match property is in a source water protection area for an active or proposed source of public drinking water for a community or non-transient non-community water system, except for any small portions of land which extend beyond the source water protection area boundary which would be impractical to subdivide off, as specified in RSA 486-A:7, II(a);

(b) Each grant property and each match property that is being obtained for the protection of a surface water supply either:

(1) Is within 5 miles of the intake on a river or, in the case of reservoirs or lakes, is within 5 miles of the source being protected; or

(2) Contains riparian frontage within the watershed of the water supply source;

(c) Each grant property and each match property is outside the sanitary protective area for a proposed source, provided that any portion of a property that is within the sanitary protective area for a proposed source is not eligible for funding;

(d) The applicant's share of the project value, or match, meets the criteria specified in Env-Dw 1002.06;

(e) Each grant property and each match property is undeveloped land and free of known contamination sources and potential contamination sources that are known to the applicant or identified in the department's

geographic information system;

(f) No grant property is already permanently protected or owned by the applicant prior to submitting a project eligibility application;

(g) No match property is already permanently protected more than one year prior to the date the project eligibility application is submitted; and

(h) Title to each grant property and each match property will be held by a water supply land protection grantee as defined by RSA 486-A:2, VIII.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.06 Match Criteria.

(a) The value of the match shall equal at least 75% of the eligible water supply land protection costs as defined by RSA 486-A:2, III-a, which include the costs for the land or interest in land and associated legal and transaction costs associated with the protection of each grant property and each match property.

(b) The match shall consist of one or more of the following:

(1) A municipal, state, or federal appropriation;

(2) A private cash donation;

(3) A donation, or partial donation, of match property in one or more existing or proposed source water protection areas, providing the following conditions are met:

a. Title to the match property will be held by a water supply land protection grantee as defined by RSA 486-A:2, VIII;

b. The transaction(s) to acquire the match property will be completed prior to or simultaneously with the completion of the transaction(s) for the grant property(ies);

c. The match property is located within the same source water protection area as that for the grant property(ies), or is in a protection area for another source serving the same grantee; and

d. The match value for the match property has been or will be established by an appraisal in accordance with Env-Dw 1002.17; and

(4) A donation, or partial donation, of services or payment for services necessary to complete the transaction, including land transaction consultant, survey, appraisal, title opinion, environmental assessment, stewardship baseline documentation, and attorney fees.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.07 Project Eligibility Application. The applicant for project eligibility shall provide the following on or with a form obtained from the department:

(a) The name, mailing address, and daytime telephone number of the applicant and, if available, and e-mail address or web site address;

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(b) Whether the applicant is a municipality or a §501(c)(3) non-profit having public water supply as a principal mission;

(c) The name, mailing address, and daytime telephone number of an individual who is authorized to interact with the department on behalf of the applicant relative to the application and, if available, and e-mail address for that individual;

(d) The US Environmental Protection Agency public water system identification number(s) for the source(s) of public drinking water that will be protected or, for a proposed source, the public water system's identification number;

(e) The location of each grant property and each match property, including tax map, lot number, and deed reference, including book and page;

(f) Geographic information system (GIS) shape file(s) or a paper map showing the boundaries of each grant property and each match property;

(g) The acreage of each grant property and each match property;

(h) The total acreage of the area proposed for protection, that is, the total combined acreage of all the grant properties and match properties;

(i) A description of each grant property and each match property, which includes:

(1) The location of structures, impoundments, and gravel pits or other disturbances;

(2) The approximate area, in acres or by percentage, covered by field, forest, wetlands, and surface waters respectively;

(3) A statement that the property does not have any known contamination source; and

(4) A statement that the property does not have any potential contamination sources known to the applicant or identified by the department's geographic information system;

(j) A description of how each of the eligibility criteria specified in Env-Dw 1002.05 has been met;

(k) A description of conservation values for each grant property and each match property, including:

(1) Watershed, floodplain, wetland, and water-quality protection value;

(2) Public recreational uses, accessibility, and potential;

(3) Significant scenic value;

(4) Historic, cultural or archaeological value;

(5) Unique geologic features;

(6) Rare species value or "exemplary natural communities" value, as identified by the New Hampshire department of resources and economic development, division of forest and lands, natural heritage bureau ("NH NHB");

(7) Length of undeveloped shoreline on pond, lake, stream, or navigable river;

(8) Wildlife value and management potential, such as being identified as a conservation focus area by the New Hampshire fish and game department's Wildlife Action Plan;

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- (9) Forestry value, management status, and acres of productive soils;
- (10) Agricultural value, including acres of “important farmland” identified by the U.S. Department of Agriculture, Natural Resources Conservation Service; and
- (11) Any other identified conservation value;
- (l) The identity of each owner of each grant property and each match property and a statement, signed and dated by each owner, stating the owner’s willingness to negotiate the acquisition of the property;
- (m) An estimated fair market value or ad valorem price for each grant property and each match property;
- (n) If known, the price at which each owner of each grant property and each match property will sell the property;
- (o) The total value of the match, including:
 - (1) Funds, whether authorized, received, or anticipated; and
 - (2) The estimated cost of services being used as a match;
- (p) The amount of funding sought from the department to acquire the grant property(ies);
- (q) Whether the property interest anticipated to be acquired is fee simple title or a conservation easement;
- (r) Directions to each grant property and each match property, with instructions on how to gain access to it for purposes of inspection;
- (s) A copy of a source water or wellhead protection plan, if available; and
- (t) The signed and dated statements specified in Env-Dw 1002.10(a).

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.08 Eligibility Determination.

- (a) The department shall determine that a proposed project warrants review as a grant application if the eligibility application demonstrates that the project meets the eligibility requirements specified in Env-Dw 1002.05.
- (b) The department shall notify the applicant in writing of the project’s eligibility within 30 calendar days of the project eligibility application submission deadline.
- (c) If the project as proposed does not meet the eligibility requirements specified in Env-Dw 1002.05, the applicant may revise the project eligibility application and resubmit it in a subsequent grant round.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.09 Final Grant Application Requirements. After being notified that the project is eligible, the applicant shall submit the following on or with a final grant application form obtained from the department:

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- (a) The information specified in Env-Dw 1002.07(a) through (s); and
- (b) The signed and dated statements specified in Env-Dw 1002.10(b).

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.10 Statements Required for Grant Applications.

- (a) The signed and dated statements required by Env-Dw 1002.07(t) shall be as follows:
 - (1) A statement signed and dated by the applicant that all data and information submitted to qualify for the grant are true and correct to the best of the applicant's knowledge; and
 - (2) A statement signed and dated by each landowner acknowledging the landowner's willingness to enter into negotiations for the acquisition and listing all liens and encumbrances on the property.
- (b) The signed and dated statements required by Env-Dw 1002.09(b) shall be as follows:
 - (1) A statement signed and dated by each owner of each grant property and each match property that the owner:
 - a. Agrees to not sell or commit to sell the property(ies) covered by the application except to the applicant for 120 days;
 - b. Agrees to allow the property(ies) to be inspected, surveyed, and appraised within 120 days from the date of receipt by the department of a copy of the application; and
 - c. Identifies all liens and encumbrances on the property(ies); and
 - (2) A statement signed and dated by the applicant that the applicant will comply with the conditions specified in RSA 486-A:7, II(a) through (e) and that the data and information submitted to qualify for the grant are true and correct.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.11 Confidentiality of Certain Information. The price at which each owner of grant property or match property will sell the property provided pursuant to Env-Dw 1002.07(n) and the statement of liens and encumbrances that is submitted in accordance with Env-Dw 1002.10(a)(2) or (b)(1)c., shall be:

- (a) Treated as confidential under the provisions of RSA 91-A:5, IV; and
- (b) Subject to disclosure only with the consent of the applicant until the department has selected the application for grant funding.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.12 Application Ranking and Selection.

- (a) The department shall rank each project within 60 days of the final application submittal deadline established pursuant to Env-Dw 1002.04.

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(b) Subject to (f), below, the ranking shall be based on the points awarded to each application by the department using the point system specified in Env-Dw 1002.13 after the department reviews the application and conducts a site walk, with the application receiving the most points being ranked the highest.

(c) The department shall:

(1) Provide notice and otherwise proceed in accordance with RSA 486-A:8-a, II; and

(2) Select projects for funding in each grant round starting with the highest ranked project and continuing until all available funding is depleted.

(d) No single applicant shall receive greater than 30% of the available funding in any one grant application round.

(e) Projects not selected for funding in a grant round due to insufficient funds shall be reconsidered in future grant rounds providing the applicant notifies the department that the grant application is to be reconsidered and any date-sensitive aspects of the application are updated.

(f) Notwithstanding the number of points assigned pursuant to Env-Dw 1002.13, for the purpose of allocating funds provided by the department of transportation as part of the mitigation package associated with the wetlands permit for the interstate highway I-93 widening project to permanently protect critical water supply lands in municipalities located near the project, the department shall give first priority to projects in the Lake Massabesic watershed.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.13 Scoring System.

(a) The department shall assign points to each application as specified in (b) through (q), below, and then add the points together to get one point total, or score, for the application as a whole.

(b) For each project that is located within more than one source water protection area, the department shall calculate a score for each source water protection area and then use the highest score to rank the project in relation to other projects.

(c) The department shall assign points based on the type of water system as follows:

(1) For a non-transient non-community system, 0 points;

(2) For a community system other than a municipally-owned system, one point; or

(3) For a municipal system, 5 points.

(d) The department shall assign points based on the population served by the water system as follows:

(1) For a system serving 25 to 100 people, 0 points;

(2) For a system serving 101 to 500 people, one point;

(3) For a system serving 501 to 2,500 people, 2 points;

(4) For a system serving 2,501 to 5,000 people, 3 points; or

(5) For a system serving over 5,000 people, 4 points.

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(e) The department shall assign points based on the number of community water supply sources to be protected as follows:

- (1) For one source, 0 points;
- (2) For 2 sources, one point; or
- (3) For 3 or more sources, 2 points.

(f) The department shall assign points based on the total acreage of grant property and match property as follows:

- (1) For a project containing less than 10 acres, 0 points;
- (2) For a project containing 10 acres or more but not more than 40 acres, one point;
- (3) For a project containing more than 40 but not more than 99 acres, 2 points;
- (4) For a project containing more than 99 but not more than 250 acres, 3 points; or
- (5) For a project containing more than 250 acres, 4 points.

(g) The department shall assign points based on the presence of any or all of the following natural resource, cultural, and historical attributes on the grant property and match property, as follows:

- (1) For a project containing or abutting great ponds, perennial streams or rivers, non-forested wetlands, or floodplains greater than 5 acres, one point;
- (2) For a project containing state- or federally-listed threatened or endangered species, habitat for such species that has been determined by the executive director of the New Hampshire fish and game department, pursuant to RSA 212-A:9, III, to be critical, or rare plants, rare animals, or exemplary natural communities that have been identified by the NH NHB, ½ point;
- (3) For a project that abuts conservation land such that there is an unfragmented block of undeveloped land 500 acres or more in size, ½ point;
- (4) For a project containing important farmland according to the U.S. Department of Agriculture, Natural Resources Conservation Service classification system, ½ point;
- (5) For a project with existing or potential outdoor recreation amenities, such as public trails and public boat access points, ½ point;
- (6) For a project containing historical, cultural, or archaeologically significant lands that are on the National Register of Historic Places or identified by the New Hampshire department of cultural resources, division of historical resources, ½ point; and
- (7) For a project containing any other identified conservation value, ½ point.

(h) For groundwater sources, the department shall assign points based on the distance of the grant property or match property from the existing or proposed source to be protected as follows:

- (1) If any of the land is located within the sanitary protective area for an existing source, 25 points;
- (2) If any of the land is located within 600 feet of the edge of the sanitary protective area, 20 points;

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- (3) If any of the land is located 600 to 1,000 feet from the edge of the sanitary protective area, 15 points;
 - (4) If any of the land is located 1,000 to 2,000 feet from the edge of the sanitary protective area, 10 points;
 - (5) If any of the land is located 2,000 to 3,000 feet from the edge of the sanitary protective area, 5 points;
 - (6) If any of the land is located 3,000 to 4,000 feet from the edge of the sanitary protective area, 2 points;
 - (7) If any of the land is located 4,000 to 5,000 feet from the edge of the sanitary protective area, one point; or
 - (8) If any of the land is located more than 5,000 feet from the edge of the sanitary protective area, 0 points.
- (i) For river sources, the department shall assign points based on the distance of the grant property and match property up gradient from the intake and within the watershed of the source being protected, as follows:
- (1) If any of the land is located within 400 feet of the intake, 20 points;
 - (2) If any of the land is located 400 to 1,000 feet from the intake, 15 points;
 - (3) If any of the land is located 1,000 to 2,000 feet from the intake, 10 points;
 - (4) If any of the land is located 2,000 to 3,000 feet from the intake, 5 points;
 - (5) If any of the land is located 3,000 to 4,000 feet from the intake, 2 points;
 - (6) If any of the land is located 4,000 to 5,000 feet from the intake, one point; or
 - (7) If any of the land is located more than 5,000 feet from the intake, 0 points.
- (j) For surface water sources, the department shall assign points based on riparian frontage as follows:
- (1) For riparian frontage that is within 5 miles of the intake or shore, 2 points for every 1,000 feet of frontage;
 - (2) For riparian frontage that is greater than 5 miles and less than 10 miles from the intake or shore, one point for every 1,000 feet of said frontage; and
 - (3) If the project includes land on both sides of a river or stream, the frontage on both sides shall be counted.
- (k) For pond, lake, or impoundment sources, the department shall assign points based on the distance of the grant property or match property from the intake of the source being protected, as follows:
- (1) If any of the land is within 400 feet of the shore, 20 points;
 - (2) If any of the land is 400 to 1,000 feet from the shore, 15 points;
 - (3) If any of the land is 1,000 to 2,000 feet from the shore, 10 points;

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- (4) If any of the land is 2,000 to 3,000 feet from the shore, 5 points;
- (5) If any of the land is 3,000 to 4,000 feet from the shore, 2 points;
- (6) If any of the land is 4,000 to 5,000 feet from the shore, one point; or
- (7) If any of the land is more than 5,000 feet of the shore, 0 points.

(l) The department shall assign points based on the percentage of total project value, including cash and interests in land to be donated, that is to be provided as match by the applicant as follows:

- (1) For a percentage of total project value greater than 75% but less than 85%, one point; or
- (2) For a percentage of total project value of 85% or greater, 2 points.

(m) The department shall assign points based on the water supply protection measures that are or will be in effect, as follows:

- (1) For sources for which a comprehensive source water protection program plan is being implemented, one point;
- (2) For sources with source water protection area regulations in effect, one point;
- (3) For sources with a source water protection area educational program in effect, one point;
- (4) For sources with an established land acquisition plan, one point;
- (5) For sources with existing source water protection area ownership beyond sanitary radius or control through easement by water suppliers or others, one point;
- (6) For sources with a long-term plan for meeting system demand, one point; and
- (7) For sources for which a water conservation plan is being implemented, one point.

(n) The department shall assign points based on the average per capita income and equalized taxable valuation for the municipality where those served by the water supply to be protected reside, based on the most recent available data, as follows:

- (1) For an applicant with either or both of the averages above the statewide average, 0 points; and
- (2) For an applicant with both of the averages below the statewide average, 2 points.

(o) The department shall assign 2 points for applications initiated or supported by the water supplier.

(p) The department shall assign one point for first time applicants.

(q) The department shall assign one point to projects with a signed contractual agreement between the applicant and the landowner(s).

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.14 Notice of Selection; Required Actions.

(a) The department shall notify each applicant in writing within 60 days of the final application deadline regarding whether the application has been selected for grant funding. The notice shall specifically

state that the selection is contingent upon the completion of the requirements specified in (b) and, if applicable, (c), below.

(b) After a project has been selected for grant funding, the applicant shall complete the following for each grant property and match property prior to the department awarding a grant:

- (1) An environmental site assessment, in accordance with Env-Dw 1002.15(c) and (d), if required by Env-Dw 1002.15(b), which indicates that the land is not contaminated;
- (2) A property survey in accordance with Env-Dw 1002.16;
- (3) An appraisal in accordance with Env-Dw 1002.17;
- (4) A title examination and legal opinion that there is clear and marketable title to the property in accordance with Env-Dw 1002.18;
- (5) Baseline documentation in accordance with Env-Dw 1002.21(c); and
- (6) A stewardship plan in accordance with Env-Dw 1002.21(d).

(c) Where the grantee is a municipality, the project shall be approved by the local governing body, as defined in RSA 672:6, of the municipality applying for the grant prior to the department awarding a grant.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.15 Environmental Site Assessment Requirements.

(a) The environmental site assessment specified in Env-Dw 1002.14(b)(1) shall be done in accordance with this section.

(b) The applicant shall submit an environmental site assessment for each grant property and match property that contains any known contamination source or potential contamination source known to the applicant or identified in the department's geographic information system, or if the site walk performed by the department in accordance with Env-Dw 1002.12(b) identifies actual or potential sources of contamination.

(c) An environmental site assessment shall be performed by an environmental consultant who has at least 5 years' experience in preparing site assessments.

(d) An environmental site assessment shall include the following:

- (1) A history of land usage that covers no less than 50 years;
- (2) A description of the site inspection;
- (3) A review of all department records relating to site investigations or other environmental assessments for all properties located within 1,000 feet of the property;
- (4) A description of the review conducted pursuant to (3), above, including the date of the review and who conducted the review;
- (5) A description of the findings from the review; and
- (6) An opinion by the consultant that there are no contamination concerns on the grant property or any match property.

- (e) The applicant shall submit the environmental site assessment to the department upon completion.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.16 Property Survey Requirements.

(a) The property survey required by Env-Dw 1002.14(b)(2) shall be done in accordance with this section if a survey of each grant property and match property does not already exist that meets the survey standards that were established by the New Hampshire board of land surveyors created under RSA 310-A:55 and that were in effect in New Hampshire at the time the notice under Env-Dw 1002.14(a) is provided.

(b) A New Hampshire licensed land surveyor shall perform a standard property survey for each property in accordance with the standards established by the New Hampshire board of land surveyors created under RSA 310-A:55. If 2 or more properties are contiguous, the survey may be done on the combined contiguous properties.

(c) In addition to marking turning points as specified in the established survey standards, the boundary lines shall be visibly marked so that they can be located by an individual who wishes to walk the boundary of the property. If the marking is not permanent, it shall be renewed at sufficient intervals so as to remain visible.

(d) The survey plan shall include the boundaries and acreage of each property and the method and accuracy of the survey.

(e) Subject to (f), below, the applicant shall provide the department with one paper copy of the standard property survey for each grant property and each match property.

(f) The applicant may provide a digitized polygon file of the standard property survey for each grant property and each match property in lieu of the paper copy required by (e), above.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.17 Appraisal Requirements.

(a) The appraisal required by Env-Dw 1004.14(b)(3) shall be done in accordance with this section.

(b) A land appraiser with at least 2-years' experience in water supply land appraisals or conservation interest appraisals of land shall perform the appraisal, as appropriate for the application.

(c) An appraisal shall be conducted for the grant property and match property based on the terms of the proposed conservation easement deed, if any, and the survey performed pursuant to Env-Dw 1002.14(b)(2).

(d) The appraisal shall determine the fair market value of the grant property and match property.

(e) The appraisal shall be completed prior to the grant being awarded but no earlier than one year prior to the land transaction.

(f) If the appraisal was completed within one year but more than 6 months prior to the land transaction, the applicant shall submit either:

- (1) A new appraisal; or

(2) An update letter from the appraiser who conducted the original appraisal confirming that a market analysis demonstrates the fair market value of the property has not changed.

(g) The applicant shall submit the appraisal to the department.

(h) The department shall accept the appraisal if the appraiser certifies that the appraisal was conducted in accordance with the Uniform Standard of Professional Appraisal Practice established by the Appraisal Foundation.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.18 Title Examination and Opinion Requirements.

(a) The title examination and opinion required by Env-Dw 1004.14(b)(4) shall be obtained in accordance with this section.

(b) The title opinion shall be based on an examination of the title of each grant property and each match property.

(c) The applicant shall submit the title examination and opinion to the department.

(d) The department shall accept the title examination and opinion if the individual rendering the opinion certifies that the title examination was conducted in accordance with the title examination standards established by the New Hampshire Bar Association that are in effect when the opinion is rendered.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.19 Conservation Interest Instrument Requirements.

(a) Each conservation interest instrument shall:

(1) Uphold the conservation purposes of RSA 486-A in perpetuity;

(2) Protect the quality and sustainable yield of ground and surface water resources associated with the property;

(3) Safeguard the environmental values of the property which are dependent on water quality and quantity; and

(4) Convey the right to the State of New Hampshire to enforce the conditions and restrictions of the conservation interest and to recover the costs of such enforcement from the easement holder or property owner, or both, if the easement holder and property owner fail to enforce the conditions and restrictions.

(b) Each conservation interest instrument shall contain, at a minimum, the following restrictions:

(1) No industrial or commercial activities or improvements shall occur on the property except in conjunction with any water supply, agricultural, forestry, or outdoor recreational activities that are allowed by the instrument, subject to such conditions as are specified in the instrument;

(2) No land surface alterations shall occur on the property, such as filling, excavation, mining, and dredging, except in conjunction with any water supply, agricultural, forestry, or outdoor recreational activities that are allowed by the instrument, and only to the extent that they do not degrade or threaten to degrade the quality and sustainable yield of ground and surface water

resources associated with the property;

(3) No wastes generated off the property shall be disposed of, stored, or discharged on the property;

(4) No substances that would be hazardous waste if discarded or abandoned shall be disposed of on the property, and no such substances shall be stored or applied on the property except in conjunction with any water supply, agricultural, forestry, or outdoor recreational activities that are allowed by the instrument, and provided that the storage and use do not threaten water supply protection and are specifically allowed by the instrument, subject to such conditions as are specified in the instrument;

(5) No motorized vehicles shall be allowed for recreational purposes, provided that snowmobiles as defined in RSA 215-A:1, XIII may be allowed if they are operated:

- a. Only on snow and ice outside the sanitary protective area of public water supply well(s);
- b. More than 250 feet from a surface water body being used as a public water supply;
- c. More than 100 feet from tributaries contributing to such water bodies; except when crossing such tributaries; and
- d. Only on designated snowmobile trails depicted on a plan approved by the department in accordance with Env-Dw 1002.20;

(6) No acts or uses shall occur on the property that would:

- a. Degrade the water quality such that the standards set for public drinking water by the department would be threatened;
- b. Cause an unsustainable quantity of water to be withdrawn; or
- c. Harm state or federally recognized rare, threatened or endangered species; and

(7) Allowable activities, such as community drinking water supply, agriculture, forestry, and outdoor recreation, shall be conducted in accordance with a plan, best management practices, or conditions set forth in the instrument.

(c) If the instrument is conveying a conservation easement, all other customary rights and privileges of fee ownership shall be retained by the fee owner, including the right to privacy and to carry out all regular agricultural and forestry practices that are not prohibited by the restrictions.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.20 Snowmobile Trail Plan Approval.

(a) Designated snowmobile trails described in Env-Dw 1002.19(b)(5)d. shall be shown on a plan submitted to the department prior to the conservation interest document being filed.

(b) The plan shall:

- (1) Show all existing and proposed trails; and
- (2) Describe how users of the trails will be educated regarding the need to protect the conservation values of the property over which the trails run.

(c) If a new trail is added or an existing trail is moved after the original plan is approved, a modified plan shall be submitted to and approved by the department prior to the new or relocated trail(s) being used.

(d) The department shall review the plan and issue a written decision to approve or deny it within 30 days of receipt of a new or modified plan.

(e) The department shall approve the plan if the trails meet the criteria specified in Env-Dw 1002.19(b)(5)a. through c. and users of the trails will be educated regarding the need to protect the conservation values of the property over which the trails run.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.21 Stewardship Requirements.

(a) The grantee shall be responsible for ongoing stewardship of each conservation interest acquired, whether as grant property or as match property.

(b) The grantee shall:

- (1) Determine the financial and management resources needed to monitor and enforce the terms of the conservation interest for each grant property and match property;
- (2) Establish that it has or can obtain funds to monitor and enforce the terms of the conservation interest;
- (3) Develop and submit to the department a stewardship plan to meet the requirements of (d), below; and
- (4) Implement the stewardship plan to safeguard the drinking water source.

(c) Prior to acquisition, the grantee shall prepare and submit a baseline documentation report that describes, in writing and with photographs, the condition of the property at the time of acquisition, including water quality and quantity data;

(d) The stewardship plan shall require the grantee to:

- (1) Inspect the property annually to confirm that boundaries are being maintained and land is being appropriately protected according to the terms of the conservation interest and for the purpose of RSA 486-A;
- (2) For property not held in fee simple, contact all landowners annually to inform the landowners of their obligations under the easement;
- (3) Prepare and submit the annual stewardship report required by RSA 486-A:7, II(e) to the department, prior to January 31 of each year, containing the following:
 - a. A description of the site inspection conducted;
 - b. A description of any physical changes to the property;
 - c. A description of any landowner contact conducted;
 - d. A description of any conditions that violate or may violate the intent of the conservation interest; and

e. A description, including current status of any violations witnessed and remedial steps taken; and

(4) If snowmobiles are allowed by the conservation interest instrument, ensure that individuals using snowmobiles comply with the snowmobile trail plan approved pursuant to Env-Dw 1002.20.

(e) The grantee may contract with a person having expertise in conservation land management to perform one or more of the requirements of this section, however the grantee shall retain ultimate responsibility for all requirements.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.22 Final Approval, Execution, and Deed Recordation.

(a) The department shall approve a land transaction based on the following:

(1) Confirmation that the property is not contaminated based on any environmental site assessment performed in accordance with Env-Dw 1002.15;

(2) Confirmation of the property boundaries and acreage by the property survey performed in accordance with Env-Dw 1002.16;

(3) Negotiation of a price not to exceed the fair market value determined by the appraisal performed in accordance with Env-Dw 1002.17;

(4) Confirmation of clear and marketable title for the property as determined by the title examination conducted in accordance with Env-Dw 1002.18;

(5) Determination that the deed language requires that the land or interest in land remains in the public trust, prohibits land uses detrimental to water supply protection, and allows for public access all in accordance with RSA 486-A:7,II (c) and (d); and Env-Dw 1002.19;

(6) Receipt by the department of the baseline documentation and stewardship plan prepared in accordance with Env-Dw 1002.21; and

(7) Confirmation that the match requirements have been met.

(b) Final execution, payment of acquisition cost, and recording of the necessary instruments of transfer shall be conducted after governor and council approval.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.23 Procedure for Release of Lands Acquired with Grant Money.

(a) As provided in RSA 486-A:13, I:

(1) No deviation in the uses of any grant property to uses or purposes not consistent with the purposes of this chapter shall be allowed; and

(2) The sale, transfer, conveyance, or release of any such land or interest in land from public trust shall be prohibited except when the conditions of RSA 486-A:13, II or III are met.

(b) A grantee who believes that the conditions of RSA 486-A:13, II or III are met may submit a

written request to the department to release lands acquired with water supply land protection grant funds.

(c) The request shall explain why the grantee believes that the conditions of RSA 486-A:13, II or III, as applicable, are met.

(d) The department shall review the request to determine whether to release the land, using all available hydrogeologic and treatment technology information.

(e) The department shall inform the grantee of the decision in writing within 90 days of receiving the request.

(f) If the department releases the land, the department shall provide the grantee with a payment schedule within 90 days of approving a release of lands for repaying the grant as provided in RSA 486-A:13, II or III, as applicable.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.24 Waivers.

(a) The rules contained in this part are intended to apply to a variety of conditions and circumstances. It is recognized that strict compliance with all rules prescribed herein might not fit every conceivable situation. Thus, an applicant who is or would be directly and adversely affected by the strict application of a rule in Env-Dw 1002 may request a waiver thereof in accordance with this section.

(b) Each request for a waiver shall be filed with the department in writing and contain the information specified in (c), below.

(c) The applicant shall provide the following information:

- (1) A description of the grant request to which the waiver request relates;
- (2) A specific reference to the section of the rule for which a waiver is being sought;
- (3) A full explanation of why a waiver is necessary, including an explanation of the consequences of complying with the rule as written;
- (4) A full explanation of the alternative(s) proposed to be used in lieu of the requirement, if any, with backup data for support, as appropriate;
- (5) Whether the need for the waiver is time-limited and, if so, the estimated length of time the waiver will be needed;
- (6) A full explanation of why granting the waiver would meet the criteria specified in (e) and (f), below.

(d) The applicant shall sign and date the request. The signature shall constitute certification that the information provided is true, complete, and not misleading to the knowledge and belief of the signer.

(e) Subject to (f), below, the department shall grant a waiver if:

- (1) Granting the request will not result in an adverse impact on the environment, public health, or public safety, that is more significant than that which would result from complying with the rule; and
- (2) One or more of the following conditions is satisfied:

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- a. Granting the request is consistent with the intent and purpose of the rule being waived; or
- b. Strict compliance with the rule will provide no benefit to the public or the environment.

(f) No waiver shall be granted if the effect of the waiver would be to waive or modify a statutory requirement.

(g) The department shall issue a written response to a request for a waiver within 30 days of a complete request. If the waiver is denied, the denial shall specifically set forth the reason(s) for the denial.

(h) The department shall include such conditions in a waiver as are necessary to ensure that the criteria of (e) and (f), above, are met.

(i) If the need for a waiver is temporary, the waiver shall specify the date on which it will expire.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Appendix

Rule Section(s)	Statute(s) Implemented
Env-Dw 1002.01	RSA 486-A:1
Env-Dw 1002.02	RSA 486-A:2
Env-Dw 1002.03(a) & (b)	RSA 486-A:11, II
Env-Dw 1002.03(c)	RSA 486-A:11, III
Env-Dw 1002.03(d)	RSA 486-A:9, II(d); RSA 486-A:11, IV
Env-Dw 1002.03(e) & (f)	RSA 486-A:9, II(d); RSA 486-A:11, I, III, & V; RSA 486-A:13
Env-Dw 1002.04	RSA 486-A:11, II & III
Env-Dw 1002.05	RSA 486-A:2, III-a & VIII; RSA 486-A:7, II(a); RSA 486-A:11, II
Env-Dw 1002.06	RSA 486-A:2, III-a & VIII; RSA 486-A:3, II; RSA 486-A:12
Env-Dw 1002.07	RSA 486-A:11, II & III
Env-Dw 1002.08	RSA 486-A:9, II; RSA 486-A:11, II & III
Env-Dw 1002.09	RSA 486-A:11, III
Env-Dw 1002.10	RSA 486-A:7, II(a) - (e); RSA 486-A:11, III
Env-Dw 1002.11	RSA 486-A:11
Env-Dw 1002.12 - Env-Dw 1002.14	RSA 486-A:8, II; RSA 486-A:11, IV
Env-Dw 1002.15	RSA 486-A:11, III
Env-Dw 1002.16 & Env-Dw 1002.17	RSA 486-A:11, I & III
Env-Dw 1002.18	RSA 486-A:11, III
Env-Dw 1002.19	RSA 486-A:1; RSA 486-A:11, III
Env-Dw 1002.20	RSA 486-A:11, III
Env-Dw 1002.21	RSA 486-A:11, III & V
Env-Dw 1002.22	RSA 486-A:7, II(c) & (d); RSA 486-A:11
Env-Dw 1002.23	RSA 486-A:13
Env-Dw 1002.24	RSA 486-A:11; RSA 541-A:22, IV